

Lunch and Law
December 3, 2008
Commercial Bankruptcy and Insolvency

Jurisdiction of the Bankruptcy Court

S.183 of the *Bankruptcy and Insolvency Act*,
R.S.C., 1985, c. B-3 (BIA)

The Supreme Court is given "*such jurisdiction at law and in equity as will enable (it) to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act . . .*".

S.184

"*. . . the Chief Justice . . . shall appoint and assign such registrars, clerks and other officers in bankruptcy as deemed necessary . . .*".

1§3 Houlden, Morawetz and Sarra
Inherent jurisdiction

S.188(2) Courts auxiliary to each other.

S 192(1) Powers of the Registrar.

S 192(4) Appeals (on the record)

S 192(6)(7) Judges.

Rules under the BIA

Rule 3 Incorporates Supreme Court Rules.

Rules 4,5,6 Service, Time

Rule 9 "*in Bankruptcy and Insolvency*"

Rule 11 Applications and Motions

Rule 15 Search, Seizure and Arrest

Rule 77 Interim Receiver

Nova Scotia Civil Procedures Rules (New)

Rule 5 Application

Rule 22 General Provisions for Motion

Extension of time for filing a Proposal where a Notice of Intention has been filed.

S.50.4(9) provides for extensions after the initial 30 days of up to 45 days each for an aggregate of 5 months after the initial 30 days.

The insolvent must show that:

- (a) it has acted and is acting in good faith with due diligence,
- (b) it would be likely to be able to make a viable proposal if an extension were granted,
- (c) no creditor will be materially prejudiced.

S.50.4(11) allows a creditor to apply to have the extension terminated.

The first extension is usually automatic. Deputy Registrar will grant it.

Applications should be made well in time.

A good factual narrative in affidavit form should be provided to show that the conditions are met.

The applications are normally *ex parte* so assurance must be given that no one will legitimately object.

If assurance is not given notice may be required.

See *H&H Fisheries Ltd., Re*, 2005 NSSC 346
(Goodfellow J)

Discharge of Major Income Tax Debtors

Cases involving professionals and business people who will have ability to make significant post bankruptcy payments.

Specialized Practice.

Conditions usually required:

1. Substantial periodic payment,
2. Maintaining personal income tax and filings current, as well as HST and withholding taxes.

<i>Re Wheeler</i>	2003 NSSC 246
<i>Re Rideout</i>	2004 NSSC 155
<i>Re Barry</i>	2007 NSSC 172

Appeal of Disallowed Creditor's Claims

Proof of Claim S.124
 Directive No. 14R

 S.135 - Determination of
 provable claim

 S. 135(4) - appeal of
 disallowance 30 days

G§69 Houlden, Morawetz and Sarra
 Appeal Procedure

The proof of claim and the notice of disallowance constitute the pleadings. Normally the appeal is by way of trial *de novo*, that is, the claim must be fully proved before the registrar. This may be by way of application where most evidence is given by affidavit, or by way of proceeding as if it were a trial.

Dunham, Proposal of 2005 NSSC 57
Power 2007 NSSC 107
NovaLIS Technologies Limited (Re) 2008 NSSC 222

Examinations of Bankrupts and Others.

Section 163(2) authorizes the court to require the bankrupt or anyone else to be examined for the purpose of investigating the administration of an estate.

For an order one may apply *ex parte* with an affidavit outlining the reasons for the intended examination. In some circumstances it may be necessary to give notice.

*Bankruptcy of Dennis Patrick O'Toole O/A
Bubba's Truck & Trailer
2006 NSSC 382*

*Re G.W. Holmes Trucking (1990) Limited, 2005 NSSC
179*

*NsC Diesel Power Inc., (Re) (1998), 6 C.B.R. (4th) 96
(N.S., Hallett J.A.)*

Lift of Stay of Proceedings

Where there is a Notice of Intention to file a Proposal, a Division I Proposal, a Consumer Proposal or a Bankruptcy, there is an automatic stay of most proceedings against the insolvent person. Section 69.4 allows the court to lift the stay.

Dorey, Re 2008 NSSC 234

*Jenkins Re: Brookville Carrier Flatbed GP Inc. v
Blackjack Transport Ltd., 2005 NSSC 234*

Petition for Bankruptcy Orders

Section 43

The Registrar may hear a petition if it is not contested, and if contested, with the consent of the parties.

LaHave Equipment Ltd. (Re) , 2007 NSSC 283

Classic Cheesecake Delicious Delectable Delivered Inc. (Re) 2007 NSSC 190

Atlantic Ova Pro Ltd., 2006 NSSC 61

Objecting to a Bankrupt's Discharge

Automatic discharges for first time bankrupts, unless a creditor objects. S 168.1 (e).

S.172. (1) - *On the hearing of an application of a bankrupt for a discharge, the court may either grant or refuse an absolute order of discharge or suspend the operation of the order for a specific time, or grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards become due to the bankrupt or with respect to his after-acquired property.*

S.172 (2) - *The Court shall on proof of any facts mentioned in section 173*

- (a) refuse the discharge of a bankrupt;*
- (b) suspend the discharge for such period as the court thinks proper; or*
- (c) require the bankrupt, as a condition of his discharge, to perform such acts, pay such moneys, consent to such judgments or comply with such other terms as the court may direct.*

S.173(1) *Facts for which a discharge may be refused, suspended or granted conditionally.*

S. 178(1) *Debts not released by order of discharge.*

Proceeding by creditor when trustee refuses to act.

An estate may have a cause of action which the trustee elects not to pursue because it does not have the necessary funds or decides that it would not be cost effective.

S. 38 allows the court to authorize the cause of action to be taken over by a creditor at its own risk and expense. Any benefit derived from the action is then applied against the creditor's claim and the surplus belongs to the estate.

Richard W. Cregan, Q.C. Registrar in Bankruptcy
(902) 424-0259
creganrw@gov.ns.ca

Sally LeRue Deputy Registrar in Bankruptcy
(902) 424-6908
leruesi@gov.ns.ca